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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------------|------------------|
| 10/583,037 | 06/11/2007 | Takashi Abe | 8038-1074 | 6753 |
| 466 | 7590 | 11/29/2007 | | |
| YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202 | | | EXAMINER VAKILI, ZOHREH | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1614 | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|-------------------------------|----------------------------|--|
| Office Action Summary | Application No. 10/583,037 | Applicant(s) ABE ET AL. | |
| | Examiner Zohreh Vakili | Art Unit 1614 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>6/15/2006</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

Claim 4 is objected to because of the following informalities: the word "engery" in line 1 is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abe et al. (US Patent No. 6506552 B2), in view of Rifkin (US Patent No. 7160565 B2), and further in view of Posner (US Patent No. 6017946).

Abe et al. teach an amino acid-trehalose composition comprising an amino acid composition which comprises proline, alanine, glycine, valine, histidine, isoleucine, leucine, lysine, phenylalanine, threonine, tyrosine, and trehalose. The amino acid-trehalose composition has effects of reducing the degree of fatigue after exercise and of recovering from fatigue (see the abstract). The amino acid composition comprises of 4-30 moles of proline, 4-16 moles of alanine, 4-16 moles of valine, 5-12 moles of lysine, 3-9 moles of isoleucine (see col. 7, claim 1). The amino acid-trehalose composition further comprises not more than 4 moles of glutamic acid (col. 7, claim 6).

Rifkin teaches a composition useful as a hydrating beverage at the same time attenuating muscle fatigue (see abstract). See Table 2 for the components of the composition pyridoxine HCL, Folic acid, cyanocobalamine, tocopherol, glutamine, amino acids, Coenzyme Q10 (see col.9, table 2). The composition further comprises trehalose (see col. 11, claim 8). The composition also comprises vitamins and amino acids. Vitamins comprise of vitamin B1, vitamin B2, niacinamide, vitamin B6, vitamin B12, folic acid, vitamin C, vitamin E. Amino acid comprise of lysine, isoleucine, leucine, valine, etc. The composition also comprises of malic acid and citric acid (see col. 12, claim 13-15 and 17).

Posner teaches a medicament containing serotonin and an antioxidant useful in the treatment such as chronic fatigue symptoms (see abstract). The composition

contains vitamins such as vitamin A, D, B, C, B6, B12, thiamine, and niacin (see col.3, lines 1-10). The formulation also contains thiamine hydrochloride, pyridoxine hydrochloride, cyannocobalamine, niacinamide, and calcium pantothenate (see col. 5, formulation 1 & 2).

It would have been obvious given the motivation above to one of ordinary skill in the art, to have combined the teachings of Abe et al., Rifkin, and Posner for the reasons cited above. Each reference teaches an amino acid composition combined with vitamins to treat fatigue. Each component of the composition and its usage is taught in the references. Therefore, one of ordinary skill in the art would have been motivated to use the teachings of the above mentioned references and produce an energy imparting amino acid composition. As combined, the cited references result in the claimed invention.

One skilled in the art would have been motivated to combine the teachings of the above references considering that it is generally prima facie obvious to combine two or more compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a composition which is to be used for the very same purpose. The idea for combining them flows logically from their having been used individually in the prior art. As shown by the recited teachings, the instant claims define nothing more than the concomitant use of amino acids and vitamins in a formulation. It would follow that the recited claims define prima facie obvious subject matter. In re Kerhoven, 626 F.2d 848, 205 USPQ 1069 (CCPA 1980).

It would have been obvious to one of ordinary skill in the art to use the teachings of the above references to generate an energy-imparting amino acid composition. Finally, one would have a reasonable expectation of success given that the above mentioned references provide a detailed blueprint for formulating an energy-imparting amino acid composition, and the steps of which are routine to one of ordinary skill in the art.

Thus in the absence of evidence to the contrary, the invention of claims 1-10 would have been prima facie obvious as a whole to one of ordinary skill in the art at the time the invention was made.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 8:30-5:00 Mon.-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili

Patent Examiner
1614

August 16, 2007


ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER